

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 13, 2003

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell
Clerk: D. E. Moore

D039477 Porter v. Legoland California, Inc.

Cause called on merits. Jim Weaver, Esq., specially appearing for William Rudolph Hopkins, Esq., argued for appellant. Debbie Kirkpatrick, Esq. argued for respondent. Cause submitted.

D036373 People v. Diaz et al.

Cause called on merits. William R. Salisbury, Esq. argued for appellant, Nunez. Gary Nelson, Esq. argued for appellant, Diaz. Nancy King, Esq. argued for appellant, Meza. Janelle Boustany, Deputy Attorney General argued for respondent. Mr. Nelson replied. Cause submitted.

Court recessed at 9:34 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D038811 Tuchscher Development, Inc. v. San Diego Unified Port District et al.

Cause called on merits. Joel R. Wohlfeil, Esq. argued for appellant. David J. Noonan, argued for respondent. Cause submitted.

D040289 Citizen Action Council v. Allied Marketing Group, Inc.

D040515 Allied Marketing Group, Inc. v. Superior Court

Causes called on merits. Ross H. Hyslop, Esq. argued for appellant. Gary W. Majors, Esq. argued for respondent. Cause submitted as to D040289 only.

Court recessed at 10:34 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and James McIntyre
Clerk: D. E. Moore

D039374 Global Laser Vision Medical Centers, Inc., et al. v. KSWB, Inc., et al.

Cause called on merits. Khodadad Sharif, Esq. argued for respondent/cross-appellant, Global Laser. John S. Moot, Esq. argued for respondent, Kawesch and etc. Guylyn R. Cummins, Esq. argued for appellant, KSWB, Inc. Paul Fine, Esq. replied for respondent/cross-appellant, Global Laser. Ms. Cummins replied. Cause submitted.

Court recessed at 2:11 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

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D038161 Redevelopment Agency of the City of San Diego v. Plant

Cause called on merits. John Morris, Esq. argued for appellant. Scott Patterson, Esq. argued for respondent/cross-appellant. Mr. Morris replied. Cause submitted.

D038708 SLM Marketing v. Neptune Marketing

Cause called on merits. Russell Brubaker, Esq. argued for appellant. Joseph J. Ehrlich, Esq. was present in oral argument with Mr. Brubaker, but did not argue. Philip H. Dyson, Esq. argued for respondent, SLM. Mark Scott Bagula, Esq. argued for respondent, SLM. Mr. Brubaker replied. Cause submitted.

Court recessed at 3:50 p.m. until Tuesday, January 14, 2003 at 9 a.m.

D039709 People v. Banks

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D041239 In re the Marriage of Wuerfel

Pursuant to California Rules of Court, rule 8, the appeal filed November 19, 2002, is dismissed for failure of appellant to timely deposit costs for preparing the record on appeal.

D041457 People v. Chaidez

The denial of a petition for writ of habeas corpus is not appealable. The appeal is dismissed.

D041323 Lee et al. v. GMS Realty, LLC.

Pursuant to California Rules of Court, rule 8, the appeal filed December 6, 2002, is dismissed for appellants' failure to timely designate the record (Cal. Rules of Court, rules 4(a) and 5(a)).

D041134 In re Watson on Habeas Corpus

The petition is denied.

D041434 In re Sandoval on Habeas Corpus

The petition is denied.

D041362 In re Summer A., a Juvenile

The appeal is dismissed without prejudice.

D037761 Elsner v. Uveges et al.

The judgment is reversed and the matter remanded for further proceedings. O'Rourke, J.; We Concur: McDonald, Acting P.J., McConnell, J.

D039812 People v. Stoetzel

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Kremer, P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D040132 In re Joshua G. et al., Juveniles

The order terminating Robert's reunification services is reversed. The matter is remanded for the court to redetermine whether Robert's reunification services should be continued under section 366.21, subdivision (g) based on (1) a redetermination of whether he has made significant progress on his case plan; (2) a determination of whether he was provided reasonable visitation with the children; and (3) any other relevant findings on properly admitted evidence, including evidence discovered since the April 9, 2002, 12-month review hearing. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D039015 Golden Eagle Insurance Company v. First Financial Insurance Company

Upon written stipulation filed by the parties to the appeal and cross-appeal, the appeal and cross-appeal are dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)). Each party to bear own costs on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D039696 In re Ruben F., a Juvenile

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D038579 People v. Solis

The judgment is modified to reduce the parole revocation fine (1202.45) to \$200. In all other respects the judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McConnell, J.

D038930 Massie v. Sharp Memorial Hospital et al.

The petition for rehearing is denied.

D030496 People v. Sepeda

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D039769 People v. Zamora

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D040580 People v. Superior Court of San Diego County/Bradway

Let a writ of mandate issue directing the Superior Court of San Diego to vacate its order of May 24, 2002, granting Bradway's motion to dismiss the allegation of special circumstances under section 190.2, subdivision (a)(15) and to enter a new and different order denying the motion. The stay of the trial in this matter lifted. CERTIFIED FOR PUBLICATION. Huffman, J.; I Concur: O'Rourke, J.;
I Dissent: McDonald, J.

D040437 In re Jovani L., a Juvenile

The judgment is affirmed. Benke, J.; We Concur: Kremer, P.J., Haller, J.

D038911 People v. Cruz

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D040252 Steven L. v. Tracy W.

The judgment is affirmed. McConnell, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D035655 People v. Snow

The opinion of this court filed February 15, 2002, is vacated. The true finding under section 667.71 is stricken. The judgment is otherwise affirmed. CERTIFIED FOR PARTIAL PUBLICATION.
McDonald, J.; We Concur: Benke, Acting P.J., Huffman, J.

D040972 Taylor M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

Let a peremptory writ of mandate issue directing the juvenile court to vacate its order dismissing the dependency petition and to hold a new hearing, consistent with this opinion, regarding whether Taylor's welfare and the interests of justice require dismissal of the dependency petition. O'Rourke, J.;
We Concur: Benke, J., Kremer, P.J.

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D039615 Save Our NTC, Inc. v. City of San Diego et al.

The judgment is affirmed. CERTIFIED FOR PUBLICATION. McIntyre, J.;
We Concur: Nares, Acting P.J., McConnell, J.

D039915 People v. Schierbaum

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D038912 People v. Alcantar

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Nares, J.

D041459 Barrett v. Superior Court of Imperial County/People

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate
Justices Alex McDonald and Judith McConnell

Clerk: D. E. Moore

D038674 People v. Porter

Cause called on merits. Rosemary Bishop, Esq. argued for appellant. Melissa Mandel, Deputy Attorney
General argued for respondent. Ms. Bishop replied. Cause submitted.

D039838 Simmons v. City of San Diego et al.

Cause called on merits. Stanley F. Zubel, Esq. argued for appellant, Simmons. Scott A. McMillan, Esq.
argued for appellant, Osborne. Charles A. Bird, Esq. argued for respondent, City of San Diego.
Kathryn Karcher, Esq. was present in oral argument for the Padres, but did not argue. Mr. Zubel replied.
Mr. McMillan replied. Moving on to second issue: Charles A. Bird, Esq. argued for respondent, City of
San Diego. Edmund Farrell, Esq. argued for appellant, Simmons. Helen Peak, Esq. was present in oral
argument for respondent, Centre City, but did not argue. Cause submitted.

Court recessed at 10:04 a.m. to change panel members. New panel members: The Honorable
Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald
and Terry O'Rourke

D040543 Rainshine Resources, Inc., et al.

Cause called on merits. Timothy J. Silverman, Esq. argued for real party in interest. Jack B. Winters,
Esq. argued for petitioner. Matter submitted.

Court recessed at 10:23 a.m. until 1:30 p.m.

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Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. E. Moore

D038921 People v. Mostrom

Cause called on merits. Richard L. Schwartzberg, Esq. argued for appellant. Charles Ragland, Deputy Attorney General argued for respondent. Mr. Schwartzberg replied. Cause submitted.

Court recessed at 1:55 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell

D038747 Holmes v. Alamor Development Company

Cause called on merits. Rory Wicks, Esq. argued for appellant. Kenyon M. Young, Esq. argued for respondent. Mr. Wicks replied. Cause submitted.

Court recessed at 2:20 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith McConnell

D039642 Agabao v. Delta Design, Inc., et al.

Cause called on merits. Deborah Lynn Raymond, Esq. argued for appellant. Fred M. Plevin, Esq. argued for respondent. Ms. Raymond replied.

D038651 Leeds et al. v. Sheinfeld

Cause called on merits. Scott Curtis Cummins, Esq. argued for appellant. Michael J. Olecki, Esq. argued for respondent. Mr. Cummins replied. Cause submitted.

Court recessed at 3:41 p.m. until Wednesday, January 15, 2003 at 9 a.m.

D041216 In re Miller on Habeas Corpus

The petition is denied without prejudice.

D041431 In re Miller on Habeas Corpus

The petition is denied without prejudice

D041376 People v. Esayian

The above-referenced case is transferred to this court for hearing and decision under California Rules of Court, rule 62.

D041218 Martinez v. Superior Court of San Diego County/People

The petition is denied.

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D041322 Mooberry v. Superior Court of San Diego County/People

The petition is denied.

D039264 In re the Marriage of Cruz

The orders are affirmed. Kremer, P.J.; We Concur: Benke, J., Huffman, J.

D039834 People v. Klemaske

The judgment is affirmed. Kremer, P.J.; We concur: Huffman, J., O'Rourke, J.

D040214 People v. Ortega

The judgment is affirmed. The trial court shall prepare and forward to the Department of Corrections an amended abstract of judgment specifying an enhancement under section 12022.7, subdivision (a) rather than subdivision (b). Benke, J.; We Concur: Kremer P.J., McIntyre, J.

D037346 Webber v. Holbrook et al.

Judgment affirmed. Respondents to recover their costs of appeal. Benke, Acting P.J.;
We Concur: Nares, J., McConnell, J.

D040821 People v. Medrano

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D038673 SCJ, Inc., et al. v. Davis

The judgment is affirmed. Benke, J.; We Concur: Kremer, P.J., McIntyre, J.

**D041272 Tamala M. v. Superior Court of San Diego County/San Diego County Health and
Human Services Agency**

The attorney for petitioner Tamala M. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Judith McConnell

Clerk: D. E. Moore

D038889 Vasquez v. State of California et al.

Cause called on merits. Robert Berke, Esq. argued for appellant. Thomas Stuart Clifton, Esq. argued for respondent. Mr. Berke replied. Cause submitted.

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Court recessed at 9:30 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

D038924 Duncan v. Otay Water District

Cause called on merits. Mark Dillon, Esq. argued for appellant/cross-respondent. Scott Patterson, Esq. argued for respondent/cross-appellant. Mr. Dillon replied. Cause submitted.

Court recessed at 10 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and James McIntyre

D039399 Gates v. Discovery Communications, Inc., et al.

Cause called on merits. Robert Steven Gutierrez, Esq. argued for appellant. Niles Sharif, Esq. argued for respondent. Mr. Gutierrez replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller
Clerk: D. E. Moore

D037855 People v. Frazer

Cause called on merits. Carl Fabian, Esq. argued for appellant, and submitted additional authorities. Bob Foster, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

D038558 Csaszi v. Sharp Mission Park

Cause called on merits. William David Evans, Esq. argued for appellant. William K. Browning, Esq. argued for respondent. Mr. Evans replied. Cause submitted.

Court recessed at 1:51 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D038622 Parsons v. Orange County Sanitation District

Cause called on merits. Richard J. Silber, Esq. argued for appellant. M. Lois Bobak, Esq. argued for respondent. Mr. Silber replied. Cause submitted.

Court recessed at 2:30 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D039683 Peters v. Masdeo

Cause called on merits. Sharron Voorhees, Esq. was present in oral argument for appellant. Cause submitted.

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January 15, 2003 (Continued)

Court recessed at 2:38 to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D040316 Adoption of Gordel J., et al., Minors

Cause called on merits. Neil Tropp, Esq. argued for appellant. Donna Kaiser, Esq. argued for respondent. Suzanne Evans, Esq. argued for the minor. Mr. Tropp replied. Cause submitted.

Court adjourned at 3:15 p.m.

D040591 People v. Bradway

The appeal is dismissed.

D041224 In re Zuniga on Habeas Corpus

The petition is denied.

D041173 Property Owners of Whispering Palms, Inc. v. Superior Court of San Diego County/Newport Pacific Inc. et al.

The petition is denied.

D041201 In re Moreno on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
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D040640 In re M.C. Jr., a Juvenile
Order modifying opinion. No change in judgment.

D040580 People v. Superior Court of San Diego County/Bradway
Order modifying opinion. No change in judgment.

D038017 Kalthia et al. v. Chhatrala et al.
The judgment is affirmed. The parties are to bear their own costs on appeal. McConnell, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D038306 Marriage of Novak
The judgment is affirmed. Parties to bear their own costs on appeal. Haller, J.; We Concur: Kremer, P.J., McDonald, J.

D038405 Morici v. Gordon et al.
The judgment is affirmed.

D038676 People v. Lopez
The petition for rehearing is denied.

D037807 Bellows v. Plaza Bonita, LLC et al.
The order granting nonsuit is reversed as to the negligence cause of action against Plaza Bonita and as to the defective design cause of action against Kone and the cause is remanded for further proceedings consistent with the view we have expressed. In all other respects the judgment is affirmed. Appellant to recover his costs of appeal. Benke, J.; We Concur: Kremer, P.J., McDonald, J.

D039845 People v. Moore
The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D040025 People v. Arceo
The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Nares, J.

D038417 People v. de la Garza
The opinion dated December 19, 2002 is modified, there is no change in judgment. The petition for rehearing is denied.

D041428 Washington v. Superior Court of San Diego County/People
The petition is denied.

D041308 Jenkins v. Babies "R" Us - The Baby Superstore
Pursuant to California Rules of Court, rule 8, the appeal is dismissed for failure of appellant to timely deposit costs for preparing the record on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 17, 2003

D039214 People v. Saenz

The matter is remanded for resentencing; in all other respects the judgment is affirmed.
McDonald, Acting P.J.; We Concur: O'Rourke, J., McConnell, J.

D038359 In re Morris H., a Juvenile

The judgment is affirmed. McConnell, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D041464 In re Thomas on Habeas Corpus

The petition is denied as premature.

D037485 People v. Athar

The opinion filed December 19, 2002, is ordered certified for publication.

The attorneys of record are:

Chris Truax, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Gary W. Schons, Assistant Attorneys General,
Robert M. Foster, Steven T. Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

D041367 In re Estrada on Habeas Corpus

The petition is denied without prejudice.